IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.322 OF 2005
IN
EXECUTION APPLICATION NO.340 OF 2004
IN
ARBITRATION REFERENCE NO.104 OF 2000

Keynote Capitals Ltd. ....Plaintiff
V/s.
Ms.Pushpa Rathi ....Defendant
And
Mukesh Sodani & Anr. ....Applicants

Mr.C. Ardeshir with Mr.Das and Mr.Ravi Goenka for the Judgment Creditor.
Mr.Swapnil Bangur with Mr.Jayant Gaikwad i/b M/s.Ajay Kandhar & Co. for the Applicants.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH JANUARY, 2006.

P.C. :

1. The Chamber Summons is taken out by the Applicants Mukesh Sodani and Ms.Seema Sodani, who are husband and wife to set aside the attachment in execution against the immovable property namely a residential flat in a building in Mumbai. The attachment was levied pursuant to and in respect of the arbitration award dated 4.8.2001 against the judgment debtor in the sum of Rs.28,57,002/- together with interest at 12% p.a. from 7.11.2000 till payment.

2. At the outset it must be noted that the judgment creditor has not produced even an iota of evidence to suggest that the judgment debtor is the owner of or has any right in respect of the said flat. The only attempt made on behalf of the judgment creditor is to poke holes in the Applicants' case.

3. On the other hand, the Applicants have produced sufficient and cogent evidence to indicate beyond any doubt that they are the owners of the said flat and also that they have created no right or interest in respect thereof in favour of the judgment debtor.

4. By an agreement dated 13th September, 1996 entered into between M/s.Jay Jay Construction Company who are the builders of the building and the Applicants the Applicants purchased the said flat for a consideration of about Rs.6,71,000/-. This agreement was submitted for registration on 21st November, 1996. The Applicants have produced evidence establishing the payment for the said flat. The payments were made by cheques. The cheques were issued at the relevant time i.e. during the period 1997-1978.

5. The out-goings and the maintenance for the suit flat have also been made by the Applicants. The Applicants had permitted the judgment debtor to occupy the said flat in view of the fact that their daughter was suffering and was unable to walk and/or climb stairs. The Applicants and the judgment debtor admittedly are friends. The aforesaid facts are contained in a letter dated 16.4.1998. I have no reason to disbelieve the Applicants' case in this regard. It is pertinent to note that unfortunately the judgment debtor's daughter in fact expired on 6th August, 2000.

6. There is nothing to suggest that the occupation by the judgment debtor of the said flat was pursuant to any right created in their favour by the Applicants.

7. The Chamber Summons is made absolute in terms of prayers (a) and (b).

8. There shall be no order as to costs.